2008-09 STATE HEALTH PLAN AMENDMENT

SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS

PUBLIC COMMENT PERIOD
DEADLINE FOR COMMENTS: AUGUST 7, 2009

GOVERNOR'S OFFICE OF HEALTH POLICY & FINANCE

The Governor's Office of Health Policy and Finance received both oral and written comments on proposed amendment to the Certificate of Need (CON) criteria in the 2008-09 State Health Plan to address health care variations and emergency department use. The proposed amendment was made public on July 17th, 2009, a public hearing was held by the Advisory Council on Health Systems Development on July 24th, 2009, and public comments were accepted until August 7th, 2009. A total of four persons provided a range of comments on the proposed rule:

1. David Winslow, Maine Hospital Association (MHA)
2. Paul Gray, MaineHealth
3. Doug Clopp, Consumers for Affordable Health Care (CAHC)
4. Gordon Smith, Maine Medical Association (MMA)

Herein is a summary of comments received, with our responses.

Comment: The rule may penalize applicants that don't address potentially preventable admissions or emergency department (ED) use for projects that are not relevant or applicable to the new standards (e.g. the cogeneration plant at EMMC). [MHA oral only, MMA oral only]; There is concern that scoring on CON projects could be affected and lowered if non-applicable projects did not get a score for these new criteria. [MaineHealth]

Response: The CON unit does not "score" applications, thus applications that do not relate to the new criteria will not be adversely affected. Presently, the State Health Plan states, "a Certificate of Need cannot be approved unless the project meets a range of statutory requirements and is consistent with goals explicitly outlined in the State Health Plan." It further states, "It is important to note that the order of the attributes below does NOT reflect the relative order of importance of each of the attributes, as different attributes might be needed to different degrees in different circumstances and geographic areas. Projects that meet more of these attributes shall receive higher priority than projects tat meet fewer of these attributes." It is expected that applications approved for a CON will meet some priorities of the State Health Plan.

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Comment: The rule must apply to the application not the applicant; currently five CON criteria in the State Health Plan refer to "applicant" and four criteria refer to "application". [MaineHealth]

Response: The State Health Plan already gives priority for an applicant who has a plan to reduce non-emergent ER use. This means that a project that does not expressly address non-emergent ER use could still receive priority of the applicant had a plan to address this issue. Thus, the criterion already applies to the applicant. With regard to high-cost, high-variation outpatient services, as well as for projects that expressly propose to reduce potentially affordable admissions, these priorities are more suited to the actual project or application under review. This gives an applicant the opportunity to receive priority in two ways.

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Comment: "Small organizations, situations where there are multiple providers in the same geographic area, or large providers serving multiple HSA's create real problems in defining what is an appropriate initiative to reduce rates or in determining the potential impact…or even in determining if there is a problem with use rates A small applicant may not have much impact; a geographic area with multiple providers can lead to 'finger pointing, i.e., its not my problem'; and larger organizations have both of theses problems. Again, if the criteria is project specific, not applicant specific, that may make the DHHS review more straight forward." [MaineHealth]

Response: Please see response to comment above. In addition, whether it is potentially avoidable admissions, advanced imaging utilization or wide variation in other high cost, high volume services, it is agreed there is no "right" rate of utilization and spending, but all providers can improve. Each applicant would be expected to review the data for their HSA, evaluate their own data, and determine in which areas improvement can be made.

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Comment: Will the new criteria will be used for replacement equipment? [MaineHealth oral only]

Response: The CON statue was amended during the past legislative session to require a CON for replacement of major medical equipment with a cost of $2,000,000 or more (PL 2009, ch. 383, §§ 5,6). The new priorities will be assessed for all projects, including replacement equipment that falls within the

new threshold.

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Comment: When addressing the issues of unwarranted variation and ED utilization while prioritizing applications, the CON Unit should ensure that geographic access standards are preserved. [CAHC]

Response: Access standards will continue to apply. Applications must meet the criteria in 22 MRSA §335 in order to be approved; geographic access standards relate to insurance coverage under 24-A MRSA § 4303 and are regulated by the Bureau of Insurance. Under a new program enacted this session, carriers may develop and file with the superintendent for approval a pilot program that allows carriers to reward providers for quality and efficiency through tiered benefit networks and providing incentives to members. PL 2009, ch. 357. The Superintendent must also consult with the Maine Quality Forum in assessing quality within the pilot. *Id.* It should be noted, however, that termination of services by a health care provider no longer requires a CON.

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